

Mayappa Vs. Mayappa Beerappa Kurbar and ors.

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Court : Karnataka

Decided On : Feb-08-2006

Reported in : ILR2006KAR1537; 2006(3)KarLJ245

Judge : K. Ramanna, J.

Acts : [Karnataka Land Revenue Act, 1964](#) - Sections 49, 50, 56, 56(1), 56(3) and 139

Appeal No. : Writ Petition No. 45498/04

Appellant : Mayappa

Respondent : Mayappa Beerappa Kurbar and ors.

Advocate for Def. : R. Kumar, H.C.G.P. for R-6-8 and ;B.S. Kamate, Adv. for R-2 to 5, R-1, Sd. Adv.

Advocate for Pet/Ap. : Umesh R. Malimath Adv.

Judgement :

ORDER

K. Ramanna, J.

1. Though the matter is listed for preliminary hearing in B group, by consent of both the Learned Counsel, the matter is taken up for final disposal.

2. This is a writ petition filed by the petitioner, seeking writ of certiorari or direction, quashing the order dated nil, July 2003 passed by the 8th Respondent. According to the petitioner, he is the owner of the land bearing Sy. No. 188 situated at Godageri village, Taluk Hukkeri, Belgaum District, measuring 5 acres 1 gunta. The petitioner himself has approached the Asst. Director of Land Records to measure the Land and fix the boundaries. The Asst. Director of Land Records passed an order contrary to the existing facts and changed the boundary stones to favour the respondents. Being aggrieved by the said order the petitioner has preferred an appeal before the Deputy Director of Land Records, Belgaum. In turn the Deputy Director of Land Records dismissed the appeal filed by the petitioner, upholding the order passed by the Asst. Director of Land Records dated 23/10/99. The Asst. Director of Land Records has taken the measurement on 18/6/1999 and has taken the decision on 23/10/1999. Accordingly, the petitioner herein filed a Revision before the Joint Director of Land Records, Belgaum. But without considering the revision petition, the Joint Director gave an endorsement that the revision is not maintainable under Section 139 of the K.L.R. Act. Therefore, the petitioner has come up with this writ petition.

3. Heard the arguments of Learned Counsel for the petitioner, Learned Counsel for Respondents-2 to 5 and Learned High Court Government pleader for Respondents-6 to 8.

4. In spite of granting sufficient time, the respondents-2 to 5 have not filed any objections. The Learned Counsel for the petitioner submits that the petitioner herein has rightly challenged the order passed by the Asst. Director of Land Records dated 23/10/1999 before the Joint Director-cum-Deputy Commissioner. The endorsement Annex ure-B issued by the Joint Director of Land Records which discloses that revision is not maintainable under Section 139 of the Karnataka Land Revenue Act, is not correct. The revision is maintainable under Section 56 of the Karnataka Land Revenue Act. Therefore, the Joint Director of Land Records, Belgaum-8th respondent may be directed to dispose of the revision in accordance with Law.

5. On the other hand the Learned High Court Govt. Pleader representing respondents-6 to 8 and the Learned Counsel appearing for respondents-2 to 5 contended that the Joint Director of Land Records is right in not entertaining the revision petition filed by the petitioner. Therefore, the present writ petition is not maintainable and the same is liable to be dismissed.

6. I have carefully examined the contention and the arguments advanced by the Learned Counsel for the petitioner and the respondents and perused the records. It is seen that the petitioner herein has preferred an appeal against the order dated 23.10.1999 passed by the Asst. Director of Land Records, Belgaum, in case No. BND: APL: SR: 12:98-99 with regard to fixation of boundaries in respect of the land between block No. 187 and 188 of Godageri Village in Hukkeri taluk. After hearing both parties the Deputy Director of Land Records, Belgaum, dismissed the said case by confirming the order passed by the Assistant Director of Land Records. On an appeal, the Joint Director of Land Records, Belgaum, gave an endorsement to the petitioner as per Annexure-B holding that the Deputy Director of the Land Records has finally given his verdict under Section 139 of the [Karnataka Land Revenue Act, 1964](#), therefore there is no scope for any further enquiry, and returned the papers.

7. When an appeal is filed under Section 49 of the Karnataka Land Revenue Act, the second appeal lies to the Joint Director of Land Records, who is also designated as Deputy Commissioner. In this regard it is relevant to quote Section 56(1)(i) of the Karnataka Land Revenue Act has clearly explains that:

Special Deputy Commissioner shall be deemed to be not subordinate to the Deputy Commissioner.

Further, Section 56(3) of the Karnataka Land Revenue Act also provides that, if no appeal has been preferred under this chapter, the revisional powers can be exercised. Therefore, it could be said that the order passed by the Deputy Director of Land Records can be challenged either by way of second appeal or by way of a revision of course, the filing of second appeal is a statutory remedy available to the aggrieved party. Merely because the person who failed to avail of the remedy of second appeal under Section 50 he cannot be denied of availing the remedy under

revisional jurisdiction. It would be one of the alternative remedies available to the aggrieved party to choose. In this behalf a reference may be made to a decision in the case of Puttahnamma (Smt) v. C. Gangadara Murty and Ors. : [1996]2SCR75 wherein it has been held that:

The Joint Director of Land Records can suo motto correct the legality or propriety of the proceedings of any subordinate officers specially and obviously when it touches the interest of the State.

8. Therefore, the revision petition filed by the petitioner before the Joint Director of Land Records, Hukkeri, against the order passed by the Deputy Director of Land Records, Belgaum, is maintainable and Annexure-B, an endorsement issued by the Joint Director of Land Records, Belgaum, is hereby quashed and the matter is remitted back to the Joint Director of Land Records, Belgaum, with a direction to secure the presence of both parties and after giving sufficient opportunity of hearing dispose of the case in accordance with law.

9. Accordingly, the writ petition is disposed off.

Till the disposal of the case before the Joint Director of Land Records, Respondents-6 to 8 are restrained from changing the records and maps pertaining to the land of the petitioner in survey No. 188 situated at Godageri village, Taluk Hukkeri, Belgaum District, measuring 5 acres 1 guntas.

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